

this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Assistant Administrator may amend, suspend or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely if the permit holder (the Holder) has violated the terms of the permit or applicable regulations. Any such action will be provided in writing to the Holder, and will include the reason(s) for the action taken. The Holder may appeal the action as provided for in § 936.10.

§ 936.9 Certification of other permits.

(a) All permits, licenses, and other authorizations issued pursuant to any other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by § 936.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) A permit, license, or other authorization allowing the discharge of municipal sewage, the laying of any pipeline outside 2 nmi from the Farallon Islands, Bolinas Lagoon and Areas of Special Biological Significance, or the disposal of dredge material at the interim dumpsite now established approximately 10 nmi south of the Southeast Farallon Island prior to the selection of a permanent dumpsite shall be valid if certified by the Assistant Administrator as consistent with the purpose of the Sanctuary and having no significant effect on sanctuary resources. Such certification may impose terms and conditions as deemed appropriate to ensure consistency.

(c) In considering whether to make the certifications called for in this section, the Assistant Administrator may seek and consider the views of any other person or entity, within or outside the Federal Government, and may hold a public hearing as deemed appropriate.

(d) Any certification called for in this section shall be presumed unless the Assistant Administrator acts to deny or condition certification within 60 days from the date that the Assistant Administrator receives notice of the proposed permit and the necessary supporting data.

(e) The Assistant Administrator may amend, suspend, or revoke any certification made under this section

whenever continued operation would violate any terms or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken.

(f) Either the holder or the issuing agency may appeal any action conditioning, denying, amending, suspending, or revoking any certification in accordance with the procedure provided for in § 936.10.

§ 936.10 Appeals of administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial or conditioning of any permit under § 936.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reason(s) therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the Appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in Section 936.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, and the Hearing Officer's recommended decision, if any, as provided in paragraph (c) and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated Hearing Officer after first giving notice of the time, place, and subject matter of the hearing in the Federal Register. Such hearing must normally be held no later than 30 days following publication of the notice in the Federal Register unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant, the Applicant (if different), and other interested persons (at the discretion of the Hearing Officer) may appear

personally or by counsel at the hearing, and submit material and present arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action will constitute final action for the agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the Appellant or Applicant stating the reason(s) for the extension.

Appendix I.—Point Reyes/Farallon Islands Proposed Marine Sanctuary, California, West Coast, United States

[Listing of "practical" (rounded-off) coordinates for the two boundary alternatives, coordinates have been rounded-off to whole values for seconds of latitude and longitude.]

| Pt. No. | Latitude | Longitude |
|---------|-----------|------------|
| 1 | 38°15'50" | 123°10'49" |
| 2 | 38°12'36" | 123°07'05" |
| 3 | 38°09'57" | 123°05'27" |
| 4 | 38°08'27" | 123°04'53" |
| 5 | 38°07'42" | 123°05'11" |
| 6 | 38°06'08" | 123°05'49" |
| 7 | 38°05'27" | 123°06'10" |
| 8 | 38°04'45" | 123°06'29" |
| 9 | 38°03'54" | 123°06'58" |
| 10 | 38°03'08" | 123°07'38" |
| 11 | 37°58'11" | 123°08'44" |
| 12 | 37°57'38" | 123°11'25" |
| 13 | 37°54'19" | 123°17'41" |
| 14 | 37°48'10" | 123°21'20" |
| 15 | 37°43'57" | 123°21'16" |
| 16 | 37°39'38" | 123°19'05" |
| 17 | 37°37'25" | 123°18'39" |
| 18 | 37°36'55" | 123°15'58" |
| 19 | 37°35'30" | 123°13'31" |
| 20 | 37°33'47" | 123°11'51" |
| 21 | 37°31'12" | 123°07'40" |
| 22 | 37°30'30" | 123°05'42" |
| 23 | 37°29'39" | 123°00'24" |
| 24 | 37°30'34" | 122°54'18" |
| 25 | 37°31'48" | 122°51'32" |
| 26 | 37°34'18" | 122°48'10" |
| 27 | 37°36'59" | 122°46'06" |
| 28 | 37°39'59" | 122°45'00" |
| 29 | 37°52'58" | 122°37'35" |
| A-1 | 37°36'05" | 123°14'30" |
| A-2 | 37°38'01" | 123°19'37" |
| A-3 | 37°41'20" | 123°23'30" |
| A-4 | 37°45'34" | 123°25'33" |
| A-5 | 37°50'06" | 123°25'29" |
| A-6 | 37°54'17" | 123°23'18" |
| A-7 | 37°57'32" | 123°19'19" |
| A-8 | 37°59'22" | 123°14'06" |
| A-9 | 37°59'32" | 123°08'25" |

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BILLING CODE 3510-08-M

15 CFR Part 936

Gray's Reef National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The Office of Coastal Zone Management within NOAA is issuing the Designation and final regulations for the Gray's Reef National Marine Sanctuary, 17.5 nmi east of Sapelo Island, Georgia (the Sanctuary). The Sanctuary was designated on January 16, 1981, after receiving Presidential approval on January 16, 1981. The Designation Document (the Designation) acts as a constitution for the Sanctuary, establishing its boundaries, purposes, and the activities subject to regulation. The regulations establish, in accordance with the terms of the Designation, the limitations and prohibitions on activities regulated within the Sanctuary, the procedures by which persons may obtain permits for otherwise prohibited activities, and the penalties for committing prohibited actions.

DATE: These implementing regulations are expected to become effective upon the expiration of a period of 60 calendar days of continuous session of Congress after their transmittal to Congress, concurrent with publication. This 60-day period is interrupted if Congress takes certain adjournments and the continuity of session is broken by an adjournment *sine die*. Therefore, the effective date can be determined by calling or writing the contact identified below. However, notification will be published in the **Federal Register** when the regulations become effective.

ADDRESS: NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 USC 1431-1434 (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the Continental Shelf as marine sanctuaries to preserve or

restore distinctive conservational, recreational, ecological, or aesthetic values. Section 302(f)(1) of the Act directs the Secretary to issue necessary and reasonable regulations to control activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U. S. Department of Commerce (the Assistant Administrator).

On January 16, 1981, the Assistant Administrator received the President's approval to designate as a marine sanctuary a 16.68 square nautical mile (sq nmi) area located 17.5 nmi east of Sapelo Island, Georgia. The area was so designated on January 16, 1981.

The Act, as amended by Public Law 96-332, provides that the Designation becomes effective unless Congress disapproves it or any of its terms by a concurrent resolution adopted by both Houses "before the end of the first period of sixty calendar days of continuous session" after transmittal of the Designation to Congress (Sections 302(b)(1) and 302(h)). As noted by the President in his statement of August 29, 1980, when signing Public Law 96-332, this provision raises constitutional questions but will be treated as a "report-and-wait" provision in accordance with that statement. Consequently, the regulations will not become effective until after the 60-day period described in Section 302(h). This period does not include those days on which either House is adjourned for more than 3 days to a day certain and is broken by an adjournment *sine die*. It is unlikely that these regulations will become effective before April 1981. Notification of the effective date will be published in the **Federal Register** at that time.

The proposed area is a biologically productive live bottom reef on the South Atlantic Continental Shelf which supports representatives of Virginian, Carolinian, and West Indian Biota, including an array of seaweeds, invertebrates, fish, and turtles. The primary purpose of the regulations is to protect and to preserve the live bottom reef ecosystem, including many reef dwelling organisms. Accordingly, all activities which would adversely impact live bottom resources are prohibited, except those permitted by the Assistant Administrator in accordance with § 938.8. Such activities include: alteration of or construction on the seabed (§ 938.8(a)(1)); wire trap fishing

(§ 938.8(a)(4)); bottom trawling and specimen dredging (§ 938.8(5)); and marine specimen collecting (§ 938.8(a)(6)). Similarly, activities harming cultural or historical artifacts in the area are prohibited, except by permit (§ 938.8(a)(7)). Finally, discharge and dumping of polluting materials which could damage the natural values of the area are prohibited (§ 938.8(a)(2)). Spearfishing and anchoring are listed in the Designation as activities potentially subject to regulation, but no regulations are proposed at this time. Vessels will be required to be operated in accordance with Federal rules and regulations (§ 938.8(a)(3)). Except with respect to the deliberate damage to seabed formation, anchoring, the use of certain fishing methods, and discharges, fishing activities at the live bottom are not subject to sanctuary regulation.

On June 11, 1980, NOAA published proposed regulations for the Sanctuary in the **Federal Register** (45 FR 39507) and issued a Draft Environmental Impact Statement (DEIS) which described in detail the proposed regulatory regime and alternatives to it. After consideration of the comments, an FEIS was issued in September 1980. In response to comments on the DEIS, the proposed regulatory regime was revised in the FEIS to list anchoring in the Designation Document but exempt it from regulation at this time. Some additional comments were received on the FEIS, but the regulations discussed in the FEIS and those published here are substantially identical. The more significant comments on the proposed regulations and the regulatory elements of the impact statements and NOAA's responses to them follow:

(1) *Comment:* NOAA's proposal in the DEIS to prohibit anchoring on hard bottom outcrops and to restrict anchoring to sand bottom areas was considered inappropriate by several reviewers who stated that (1) field data showing negative impacts from current anchoring activity was lacking; (2) boaters cannot visually differentiate between hard and soft bottom substrate due to water depth and turbidity; and (3) the regulation would discriminate against user groups which do not have the skill or equipment to locate appropriate anchoring areas.

Response: NOAA reevaluated information concerning anchoring at Gray's Reef and decided that anchoring need not be regulated at this time. NOAA has listed anchoring in the Designation and will undertake various management tasks: (1) monitor anchoring practices at Gray's Reef to determine activity levels, gear types,

and environmental impacts; (2) conduct a thorough underwater resource survey to determine the exact nature and extent of hard bottom and soft bottom coverage in the sanctuary; (3) prepare nautical maps for public use showing the bathymetry and geomorphology depicted by the survey mentioned above; (4) study the feasibility of designating anchorage areas with mooring buoys; and (5) educate the user public concerning safe anchoring practices as this information becomes available through environmental impact analysis.

(2) *Comment:* Because knowledge of the extent of live bottom coverage at Gray's Reef is incomplete at this time, a few reviewers recommended that NOAA consider the largest reasonable boundary area or at least an adjustable boundary.

Response: The current proposal opts for a conservative 16.68 sq nmi sanctuary area, which includes a previously mapped 12 sq nmi area of intense concentration of live bottom and a quarter nmi extension from the periphery to provide for the inclusion of previously unidentified live bottom. As discussed in the FEIS, the ocean floor of the sanctuary and its immediate surroundings will be surveyed following designation. In the event that the survey reveals significant amounts of additional live bottom habitat that would be suitable for inclusion in the sanctuary, boundary adjustments can be made in accordance with sanctuary program regulations.

(3) *Comment:* Some local fishermen and SCUBA divers took issue with the possible regulation of spearfishing at Gray's Reef, arguing that this activity presently does not threaten resources at the live bottom.

Response: Evidence gathered by NOAA through consultation with persons in the field supported the claim that spearfishing does not pose an immediate threat to sanctuary resources. As a result, NOAA determined that spearfishing should not be subject to regulation in the Sanctuary at this time. Spearfishing is listed in the Designation and will be monitored, rather than regulated.

(4) *Comment:* Some reviewers commented that NOAA was giving preferential treatment to hook and line fishing by exempting it from the Designation and potential sanctuary regulation. Similarly, several thought that NOAA was forfeiting its mandate to manage the sanctuary in a comprehensive manner by exempting this activity.

Response: NOAA proposes to rely on the South Atlantic Fishery Management

Council (SAFMC) to control hook and line fishing in the sanctuary pursuant to Fishery Management Plans (FMPs). NOAA reviewed draft FMPs and determined that proposed management measures should be adequate to manage hook and line fishing. Fishing by this method is likely to affect sanctuary resources only if the catch level is too high. Setting this level is the responsibility of the SAFMC whose objectives should be consistent with NOAA's. NOAA will monitor all fishing activities at Gray's Reef and will continue to work closely with the SAFMC to ensure that compatible management measures are implemented to maintain and protect fishery resources in the Sanctuary.

(5) *Comment:* A few commentators felt that marine sanctuary status for Gray's Reef was unnecessary, stating that (1) the status quo already provides enough protection and a marine sanctuary would only add an unnecessary and expensive layer of Federal bureaucracy and (2) because Gray's Reef is located 17.5 nmi from shore, factors of distance, weather, sea conditions, and fuel costs limit use of the reef.

Response: (1) The many Federal agencies which exercise authority in the proposed area provide a considerable degree of regulatory protection for the resources of the area. However, the extraordinary diversity of natural resources concentrated in the proposed sanctuary deserves additional attention beyond that provided by the present institutional structure.

The marine sanctuary program, unlike other programs which have jurisdiction in the area of the proposed sanctuary, includes a mechanism to focus on this particular geographically defined marine area and to provide comprehensive research and monitoring of the condition of the resources to assure long-term protection and maximum safe use and enjoyment; other statutes do not provide in most cases the same geographically focused, comprehensive research and monitoring effort. An educational element of the program heightens public awareness of the value of the resources and thereby reduces the potential for harm; again, this aspect of the marine sanctuary program is unavailable under the present system.

Although certain uses of the area do not now seriously threaten resource quality, they could have more significant impact when activities increase. The current multitude of regulatory authorities, many of which have different objectives and jurisdictions, may not be able to respond to future activities on the basis of ecosystem issues. Because these waters contain so

many beneficial uses, the special planning and study possible in a marine sanctuary is necessary to ensure that they are used and preserved in the future as effectively as possible.

(2) Gray's Reef is both one of the largest naturally occurring live bottoms in the South Atlantic and the closest known live bottom off Georgia. The average Georgia offshore recreational fishing boat (22 feet and 150-175 horsepower) on an average day (2 to 4 foot seas) departing from Sapelo Sound makes the trip to Gray's Reef in one hour or less.

Unlike tropical reefs farther south, Gray's Reef has been isolated from many human impacts. The availability of nearshore artificial reefs and some natural reefs farther offshore Georgia, the environmental constraints posed by unpredictable weather conditions and distance from shore, and the rural character of coastal Georgia tend to limit use of Gray's Reef. However, use of this area is expected to increase in the future in direct relation to increased demand for marine-related recreation, vessel fuel expenses, and development of domestic energy and fishery resources. Whether coastal Georgia's generally rural composition will act as a deterrent so increased use is not known. With or without sanctuary status, Gray's Reef will remain a favored recreational, educational, and research site.

The Designation Document

NOAA's marine sanctuary program regulations (15 CFR Part 922, 44 FR 44831, July 31, 1979) provide that the management regime for a marine sanctuary will be established by two documents, the Designation document (the Designation) and the regulations issued pursuant to Section 302(f) of the Act. The Designation serves as a constitution for the sanctuary, establishing among other things the purpose of the sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective.

The Gray's Reef National Marine Sanctuary Designation Document is as follows:

Final Designation Document— Designation of The Gray's Reef National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (the Act), the waters at Gray's Reef in the South Atlantic Bight off the coast of Georgia are hereby designated a National

Marine Sanctuary for the purposes of: (1) protecting the quality of this unique and fragile ecological community; (2) promoting scientific understanding of this live bottom ecosystem; and (3) enhancing public awareness and wise use of this significant regional resource.

Article 1. Effect of Designation

Within the area designated as The Gray's Reef National Marine Sanctuary (the Sanctuary) described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of an area of high seas waters covering the live bottom which is located 17.5 nmi due east of Sapelo Island, Georgia. Exact coordinates are defined by regulation (§ 938.3).

Article 3. Characteristics of the Area

The Sanctuary consists of submerged limestone rock reefs with contiguous shallow-buried hardlayer and soft sedimentary regime which support rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human use, including recreational fishing and diving, scientific research, and educational demonstrations.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* To ensure the protection and preservation of the Sanctuary's marine features and the ecological, recreational, and aesthetic value of the area, the following activities within the Sanctuary may be regulated to the extent necessary:

- a. Dredging or alteration of, or construction on, the seabed;
- b. Discharging or depositing any substance or object;
- c. Vessel operations, including anchoring;
- d. Wire trap fishing;
- e. Bottom trawling and specimen dredging;
- f. Spearfishing;
- g. Marine specimen collecting; and
- h. Removal of historic or cultural resources.

Section 2. *Consistency With International Law.* The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. *Defense Activities.* The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

Section 2. *Other Programs.* All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations will set forth any necessary certification procedures.

Article 6. Alterations to This Designation

This Designation can be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and State agencies and the South Atlantic Regional Fishery Management Council, and approval by the President of the United States.

[End of Designation]

Only those activities listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearing and approval by the President. Spearfishing and anchoring are listed in Article 4 because of the potential for damage; however, no additional regulation of these activities is proposed at this time.

Public Review and Comment

NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

Dated: January 19, 1981.

Donald W. Fowler,
Deputy Assistant Administrator for Coastal Zone Management.

Accordingly, Part 938 is added as follows:

PART 938—THE GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS

- | | |
|--------|----------------------------------------------|
| Sec. | |
| 938.1 | Authority. |
| 938.2 | Purpose. |
| 938.3 | Boundaries. |
| 938.4 | Definitions. |
| 938.5 | Allowed activities. |
| 938.6 | Prohibited activities. |
| 938.7 | Penalties for commission of prohibited acts. |
| 938.8 | Permit procedures and criteria. |
| 938.9 | Certification of other permits. |
| 938.10 | Appeals of administrative action. |
| 938.11 | Amendments. |

Authority: Sec. 302(a), (f), (g) and 303 of Title III, Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434.

§ 938.1 Authority.

The Sanctuary has been designated pursuant to the authority of Section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434 (the Act). The following regulations are issued pursuant to the authorities of Sections 302(f), 302(g), and 303 of the Act.

§ 938.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the live bottom ecosystem and other natural resources of the waters of Gray's Reef and to ensure the continued availability of the area as an ecological, research, and recreational resource.

§ 938.3 Boundaries.

The sanctuary consists of 16.68 square nautical miles of high sea waters off the coast of Georgia. The sanctuary boundary includes all waters within a rectangle starting at coordinate 31° 21' 45" N, 80° 55' 17" W, commencing to coordinate 31° 25' 15" N, 80° 55' 17" W, thence to coordinate 31° 25' 15" N, 80° 49' 42" W, thence to coordinate 31° 21' 45" N, 80° 49' 42" W, thence back to the point of origin.

§ 938.4 Definitions.

(a) "Administrator" refers to the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" refers to the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Person" is any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government or any State or local unit of government.

§ 938.5 Allowed activities.

All activities except those specifically prohibited by Section 938.6 may be carried out within the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by any other authority.

§ 938.6 Prohibited activities.

(a) Except as may be necessary for national defense in accordance with Article 5, Section 2 of the Designation or as may be necessary to respond to an emergency threatening life, property, or the environment, the following activities are prohibited within the Sanctuary unless permitted by the Assistant Administrator in accordance with Section 938.8. All prohibitions will be applied consistently with international law.

(1) Alteration of or construction on the seabed.

No person shall dredge, drill, or otherwise alter the seabed in any way nor construct any structure other than a navigation aid without a permit.

(2) Discharge of substances.

No person shall deposit or discharge any materials or substances of any kind except:

(i) Fish or parts, bait, and chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling waters.

(3) Operation of watercraft.

All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no Sanctuary.

(4) Wire trap fishing.

No person shall use, place, or possess wire fish traps within the Sanctuary without a permit.

(5) Bottom trawling and specimen dredging.

No person shall use a bottom trawl, specimen dredge, or similar vessel-towed bottom sampling device within the Sanctuary without a permit.

(6) Marine specimen collecting.

(i) No person shall break, cut, or similarly damage, take, or remove any bottom formation, any marine invertebrate, or any marine plant without a permit.

(ii) No person shall take without a permit any tropical fish, which is a fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes, and which lives in a direct relationship with the live bottom community.

(iii) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from the Sanctuary.

(iv) No person shall use poisons, electric charges, explosives, or similar methods to take any marine animal or plant.

(7) Removing or damaging historic or cultural resources.

No person shall tamper with, damage, or remove any historic or cultural resources without a permit.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 938.7 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding in rem against any vessel used in violation of any such regulation.

§ 938.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under Section 938.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational

value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, Attn: Office of Sanctuary Programs, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. An application shall provide sufficient information to enable the Assistant Administrator to make the determination called for in paragraph (c) below and shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate (1) the general professional and financial responsibility of the applicant, (2) the appropriateness of the methods envisioned to the purpose(s) of the activity, (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary, (4) the end value of the activity, and (5) other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this section, the Assistant Administrator may seek and consider the views of any person or entity, within or outside of the Federal Government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained will be made available to the public.

(f) The Assistant Administrator may amend, suspend or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely, if the permit holder has violated the terms of the permit or applicable regulations. Any such action will set forth in writing to the permit holder and will include the reason(s) for the action taken. The permit holder may appeal the action as provided for in § 938.10.

§ 938.9 Certification of other permits.

(a) All permits, licenses and other authorizations issued pursuant to any

other authority are hereby certified and shall remain valid if they do not authorize any activity prohibited by Section 938.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

(b) The Assistant Administrator may amend, suspend, or revoke the certification made under this section whenever continued operation would violate any term or conditions of the certification. Any such action shall be forwarded in writing to both the holder of the certified permit and the issuing agency and shall set forth reason(s) for the action taken. Either the permit holder or the issuing agency may appeal the action as provided for in Section 938.10.

§ 938.10 Appeals of administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial, or conditioning of any permit under § 938.8 to the Administrator or NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed, and the reason(s) therefore, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator will notify the permit applicant, if other than the Appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator will decide the appeal in accordance with the criteria defined in § 938.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing, the Hearing Officer's recommended decision, if any, as provided in paragraph (c), and such other considerations as deemed appropriate. The Administrator will notify all interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a designated Hearing Officer after first giving notice of the time, place, and subject matter of the hearing in the *Federal Register*. Such hearing must normally be held no later than 30 days

following publication of the notice in the *Federal Register* unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant, the Applicant (if different) and other interested persons (at the discretion of the Hearing Officer) may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision and the reason(s) for the decision, in writing, within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action will constitute final action for the Agency for the purposes of the Administrative Procedures Act.

(e) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Administrator for good cause upon written request from the Appellant or Applicant stating the reason(s) for the extension.

[FR Doc. 81-2482 Filed 1-23-81; 8:45 am]

BILLING CODE 3510-08-M

15 CFR Part 937

The Looe Key National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The Office of Coastal Zone Management within NOAA is issuing the Designation and final regulations for the Looe Key National Marine Sanctuary, 6.7 nautical miles southwest of Big Pine Key, Florida (the Sanctuary). The Sanctuary was designated on January 16, 1981, after receiving Presidential approval on January 16, 1981. The Designation Document acts as a constitution for the Sanctuary, establishing its boundaries, purposes, and activities subject to regulation. The regulations establish, in accordance with the terms of the Designation, the limitations and prohibitions on activities regulated within the Sanctuary, the procedures by which persons may obtain permits for otherwise prohibited

activities, and the penalties for committing prohibited actions.

DATE: These implementing regulations are expected to become effective upon the expiration of a period of 60 calendar days of continuous session of Congress after their transmittal to Congress, concurrent with publication. This 60-day period is interrupted if Congress takes certain adjournments and the continuity of session is broken by an adjournment *sine die*. Therefore, the effective date can be obtained by calling or writing the contact identified below. In addition, notification will be published in the *Federal Register* when the regulations become effective.

ADDRESS: NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Deputy Director, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434 (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the continental shelf as marine sanctuaries to preserve or restore distinctive conservational, recreational, ecological, or aesthetic values. Section 302(f)(1) of the Act directs the Secretary to issue necessary and reasonable regulations to control activities permitted within a designated marine sanctuary. The authority of the Secretary to administer the provisions of the Act has been delegated to the Assistant Administrator for Coastal Zone Management within the National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

On January 16, 1981, the Assistant Administrator received the President's approval to designate as a marine sanctuary a 5.32 square nautical mile (sq nm) area located 6.7 nm southwest of Big Pine Key, Florida. The area was so designated on January 16, 1981.

The Act, as amended by Public Law 96-332, provides that the Designation becomes effective unless Congress disapproves it or any of its terms by a concurrent resolution adopted by both Houses "before the end of the first

period of sixty calendar days of continuous session" after transmittal of the Designation to Congress (Sections 302(b)(1) and 302(h)). As noted by the President in his statement of August 29, 1980, when signing Public Law 96-332, this provision raises constitutional questions but will be treated as a "report-and-wait" provision in accordance with that statement. Consequently, the regulations will not become effective until after the 60-day period described in Section 302(h). This period does not include those days on which either House is adjourned for more than 3 days to a day certain and is broken by an adjournment *sine die*. It is unlikely that these regulations will become effective before April 1981. Notification of the effective date will be published in the *Federal Register*.

The proposed area is one of the few remaining well-developed living coral reef communities off the continental United States. The Sanctuary area includes a spectacular "spur and groove" coral formation supporting a tremendous diversity of marine species. The primary purpose of the proposed regulations is to protect and to preserve the coral reef ecosystem, including the reef dwelling organisms. Accordingly, all activities which would adversely impact coral or other distinctive marine resources are prohibited, except those permitted by the Assistant Administrator in accordance with Sec. 937.8. Such activities include: handling, picking or collecting (Sec. 937.6(a)(1)), anchoring on coral within a core trapezoidal area (Sec. 937.6(a)(2)), and using harmful fishing methods (Sec. 937.6(a)(3)). Also activities damaging cultural or historical artifacts in the area including the wreck of the H.M.S. Looe are prohibited (Sec. 937.6(a)(4)). Finally polluting activities which could damage the natural values of the area are prohibited (Sec. 937.6(a)(5)) as is tampering with markers (Sec. 937.6(a)(6)). Except with respect to the removal of or damage to coral or other distinctive features, anchoring, the use of certain fishing methods, and discharges, fishing activities are not subject to Sanctuary regulation and remain the responsibility of the Regional Fishery Management Council(s).

On May 20, 1980, NOAA published proposed regulations for the Sanctuary in the *Federal Register* (45 FR 33645) and issued a Draft Environmental Impact Statement (DEIS) which described in detail the proposed regulatory regime and alternatives to it. After consideration of the comments, a Final Environmental Impact Statement (FEIS) was issued in November 1980. In

response to comments on the DEIS, the proposed regulatory regime was revised in the FEIS in several respects: the prohibition on anchoring on coral was modified to apply only to the fore reef (the area of the well defined "spur and groove" coral) rather than the entire Sanctuary, a restriction on the speed of watercraft was eliminated, and permitting for tropical specimen collecting was restricted to educational or scientific purposes. Some additional comments were received on the FEIS, but the regulations discussed in the FEIS and those published here are substantially identical. The more significant comments on the proposed regulations and the regulatory elements of the impact statement and NOAA's responses to them follow:

(1) *Comment:* Several reviewers commented that adequate protection would be afforded Looe Key by the Fishery Management Council pursuant to the Fishery Conservation and Management Act (FCMA) and that sanctuary designation would, therefore, be duplicative and unnecessary.

Response: The Regional Fishery Management Councils (FMC) develop Fishery Management Plans (FMP), which provide for protection of selected fishery resources but in general do not focus on site-specific ecosystem management. FMP's do not necessarily consider elements of the ecosystem which are not harvested nor do they address the entire range of threats to which an area like Looe Key can be subjected. Title III of the Marine Protection, Research and Sanctuaries Act, on the other hand, authorizes conservation of special or threatened ecosystems *per se*. Because of the differing emphases of the two statutes, the efforts of the FMP's and the Marine Sanctuaries Program should, through cooperative efforts, complement each other.

In particular, major differences between the Councils' joint Coral and Coral Reef Resources FMP and the NOAA Looe Key marine sanctuary proposal include: (a) the size of the specific area to be protected, (a one sq nm Habitat Area of Particular Concern proposed in the draft Coral and Coral Reef Resources FMP vs. the 5 sq nm sanctuary); (b) the emphasis on comprehensive management planning, including interpretive programs and design and implementation of long-term site specific research and (c) the range of organisms toward which management attention is directed. Because the Council's FMP limits the definition of coral reef resources to the actual coral structure, the majority of invertebrates and lower vertebrates remain without specific protection. The productivity of coral reefs, equalled only by that of tropical rain forests, is a result of all the organisms forming the reef structure. It is this entire specialized ecosystem and not just one of its components that is the focus of sanctuary integrated research, education and regulation over the long-term.

(2) *Comment:* Anchoring should not be restricted throughout the entire Sanctuary but only on the fore reef area where the "spur

and groove" coral system is found. The larger restriction unduly hampers commercial and recreational fishing and recreational use of the area without offering significant benefits.

Response: Comment accepted. See change in Sec. 937.6(a)(2)(A).

(3) *Comment:* The proposed 5 sq nm boundary was criticized both as being too large and too small. A number of comments in the former category felt that 1 sq nm area proposed by the Fishery Management Councils as a Habitat of Particular Concern would provide an adequate management area.

Response: Protection of one sq nm area will provide for prohibitions of physical damage to the fore reef and associated organisms but it will not likely provide an adequate area for assuring biological integrity of the system. In the marine environment, protection of any core area (fore reef) requires identification and protection of even larger areas (buffers) where essential processes for the stability of the core take place. NOAA does not believe that 1 sq nm offers a reasonable buffer to assure long-term productivity of the Looe Key reef system.

The 5 sq nm sanctuary proposal has also been criticized as being inadequate to protect the fore reef because a 5 sq nm area is too small and vulnerable to outside harmful activities. In addition, some reviewers felt that the Sanctuary proposal was too small to contribute to protection of the reef tract itself. It is true that marine systems cannot be managed by reliance upon traditional land management techniques.

Essential differences between marine and terrestrial environments include the size of the ecosystems, the mobility of marine organisms and the three dimensional nature of the hydrosphere, sink, and downstream effects. Because of these characteristics, setting aside limited marine areas such as Looe Key contributes to protection of the larger system. Locating these small candidates for protection involves consideration of their location, number, size and linkages. Ideally, management would be able to identify the linkages, protect them and thereby protect the region as a whole while we continue to use and enjoy it. Though Looe Key alone represents a small segment of the reef system, it is possible that by focusing intensive management on smaller discrete units such as Biscayne Bay National Park, Key Largo National Marine Sanctuary, John Pennnekamp State Park, Fort Jefferson National Park, and Looe Key we can protect enough of the reef tract linkages to insure protection of the entire system.

In addition, these discrete protected areas are tied together by the broader conservation measures afforded under the Management Councils' Coral and Coral Reef Resources Fishery Management Plan. In the near future other FMP's will be implemented for fisheries under the jurisdiction of the South Atlantic Council. All of these entities, together with heightened awareness of the need for close cooperative management strategies, should provide an increased level of protection.

A 5 sq nm Sanctuary provides a reasonable buffer adequate to protect the fore reef without significant economic impact. Should

it become apparent at some future date based on sound data, that a larger boundary is necessary, the Designation Document could be revised. Such an action, however, would require Presidential approval.

In conclusion, after assessing the potential impacts of larger Looe Key sanctuary boundaries, NOAA continues to propose the 5 sq nm alternative. In a purely biological sense, a sanctuary covering the whole of the Florida Keys might be more desirable; however, the Looe Key proposal offers a workable proposal which will contribute to protection of the integrity of the entire reef tract and at the same time minimize economic impacts to area residents.

(4) *Comment:* A number of reviewers opposed on ecological or philosophical grounds NOAA's proposal to allow by permit tropical specimen collecting for amateur and commercial purposes. In addition, several reviewers felt that administration and enforcement of a permit system for effective regulation of commercial tropical specimen collecting could not be developed.

Response: Subsequent consultations with existing commercial permitting authorities emphasized the difficulties involved. It is not likely that permittees could be monitored to assure that their actions would be consistent with the conditions of the permit without an elaborate surveillance system with specified checkpoints for ingress and egress at the sanctuary boundaries. On the other hand, establishment of a limited permitting system to allow taking of tropical specimens for research and scientific purposes could be accomplished without administrative and enforcement difficulties. It is already being done in the Key Largo National Marine Sanctuary and the number of permit applications is low. It is anticipated that most research within the sanctuary would be nonconsumptive (i.e., observational) and would not require a permit. Limiting the taking of specimens to research and educational purposes only will result in significantly fewer permits than would a system which included commercial taking.

Furthermore, there are many available, easily accessible, and suitable areas for tropical specimen collectors to capture tropical fish and invertebrates in south Florida. Prohibiting collecting in the Looe Key area would therefore cause limited economic loss to present commercial collectors.

Accordingly the permitting criteria in Sec. 937.8(a) have been changed to prohibit collecting except by permit for scientific and educational purposes. The regulation, however, does not exclude collecting for sale to public aquaria and other educational institutions. The final regulations will help protect and enhance the tropical specimen populations at Looe Key, prevent depletion of ecologically important species, add to the aesthetics of the sanctuary and help maintain long-term productivity of this small reef for future generations.

The Designation Document

NOAA's marine sanctuary program regulations (15 CFR Part 922), provide that the management regime for a marine sanctuary will be established by two documents, a Designation Document and

regulations issued pursuant to Section 302(f) of the Act. The Designation Document serves as a constitution for the Sanctuary, establishing among other things the purpose of the Sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective.

The Looe Key National Marine Sanctuary Designation Document is as follows:

Designation Document of the Looe Key National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, P.L. 92-532 (the Act), the waters at Looe Key are hereby designated a Marine Sanctuary for the purposes of preserving and protecting this valuable and fragile ecological and recreational resource and of stimulating research activities and public awareness of its value and vulnerability.

Article 1. Effect of Designation

Within the area designated as the Looe Key National Marine Sanctuary (the Sanctuary), described in Article 2, the Act authorizes the promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through regulation and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of a 5.32 square nautical mile (sq nm) area of the waters located off the coast of Florida 6.7 nm (12.5 km) southwest of Big Pine Key in the lower Florida Keys. The precise boundaries are as follows:

Latitude and Longitude Are Furnished to .001 of a Second

| PL No. | Latitude | Longitude |
|--------|-----------|-----------|
| 2-1 | 24°31'37" | 81°26'00" |
| 2-2 | 24°33'34" | 81°26'00" |
| 2-3 | 24°34'09" | 81°23'00" |
| 2-4 | 24°32'12" | 81°23'00" |

Article 3. Characteristics of the Area That Give it Particular Value

The Sanctuary area is a valuable diverse and biologically productive living coral reef community in the Florida Reef Tract, including an array of tropical fish species and a well defined classic "spur and groove" reef system. The site also provides feeding, spawning, and nursery areas valuable for commercial fisheries and serves as a commercial, ecological, research and recreation resource.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of its marine features and the

ecological, recreational, and esthetic value of the area:

- Collecting and damaging coral.
- Tropical specimen collecting.
- Vessel operations.
- Spearfishing.
- Wire fish trap fishing.
- Lobster potting.
- Bottom trawling and specimen dredging.
- Discharging or depositing certain substances.

i. Dredging or alteration of or construction on the seabed.

j. Removing or otherwise harming cultural or historic resources.

Section 2. *Consistency with International Law.* The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law including treaties and international agreements to which the United States is a party.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article would be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. *Fishing.* The regulation of fishing if not authorized under Article 4 except with respect to the removal or damage of coral (paragraph (a)), the removal of tropical fish and invertebrates, (paragraph (b)), and the use of certain techniques including paragraphs (d) through (g). In addition, fishing vessels may be regulated with respect to discharges (paragraph (h)) and anchoring (paragraph (c)). All regulatory programs pertaining to fishing, including particularly Fishery Management Plans promulgated under the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.* shall remain in effect and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by regulation implementing Article 4.

Section 2. *Defense Activities.* The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with all regulations to the maximum extent practicable.

Section 3. *Other Programs.* All applicable regulatory programs shall remain in effect and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the Sanctuary unless authorizing any activity prohibited by any regulation implementing Article 4. The Sanctuary regulations shall set forth any necessary certification procedures.

Article 6. Alterations to this Designation

This Designation can be altered only in accordance with the same procedures by

which it has been made, including public hearings, consultation with interested Federal and State agencies and the appropriate Regional Fishery Management Councils and approval by the President of the United States.

[End of Designation Document]

Only those activities listed in Article 4 are subject to regulation in the Sanctuary. Before any additional activities may be regulated, the Designation must be amended through the entire designation procedure including public hearing and approval by the President.

Public Review and Comment:

NOAA invites public review and comment on these final regulations. Written comments should be submitted to: Director, Sanctuary Programs Office, Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

Dated: January 19, 1981.

Donald W. Fowler,

Deputy Assistant Administrator for Coastal Zone Management.

Accordingly, Part 937 is added as follows:

PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

Sec.

- 937.1 Authority.
- 937.2 Purpose.
- 937.3 Boundaries.
- 937.4 Definitions.
- 937.5 Allowed activities.
- 937.6 Activities prohibited without a permit.
- 937.7 Penalties for commission of prohibited acts.
- 937.8 Permit procedures and criteria.
- 937.9 Other permits.
- 937.10 Appeals from administrative action.

§ 937.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of Section 302(a) of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431-1434 (the Act). The following regulations are issued pursuant to the authorities of Sections 302(f), 302(g), and 303 of the Act.

§ 937.2 Purpose.

The purpose of designating the Sanctuary is to protect and preserve the coral reef ecosystem and other natural resources of the waters at Looe Key and to ensure the continued availability of the area for public educational purposes and as a commercial, ecological, research and recreational resource. This area supports a particularly rich and diverse marine biota. The area is easily

accessible to the lower Florida Keys and is widely used by boaters, charter boat operators, dive boats, recreational divers and fishermen. Consequently, both present and potential levels of use may result in harm to Looe Key in the absence of long-term planning, research, monitoring and adequate protection.

§ 937.3 Boundaries.

The Sanctuary consists of an area of 5.32 square nautical miles of high sea waters off the coast of the lower Florida Keys, 6.7 nautical miles (12.5 km) southwest of Big Pine Key. The area includes the waters overlaying a section of the submerged Florida reef tract at Looe Key. The precise boundaries are:

Latitude and Longitude Are Furnished to .001 of a Second

| PL. No. | Latitude | Longitude |
|---------|-----------|-----------|
| 2-1 | 24°31'37" | 81°26'00" |
| 2-2 | 24°33'34" | 81°26'00" |
| 2-3 | 24°34'09" | 81°23'00" |
| 2-4 | 24°32'12" | 81°23'00" |

§ 937.4 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration.

(b) "Assistant Administrator" means the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) "Person" means any private individual, partnership, corporation, or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, or any State or local unit of the government.

(d) "Tropical fish" means fish and invertebrates of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which live in a close interrelationship with the coral.

(e) "The Fore Reef" means the area of the well defined "spur and groove" coral reef as delineated by Loran readings 1, 2, 3, 4 as follows:

1. NW 7980-W-13973.7, 7980-Y-43532.7
2. SW 7980-W-13975.4, 7980-Y-43543.4
3. NE 7980-W-13975.0, 7980-Y-43530.1
4. SE 7980-W-13975.4, 7980-Y-43527.7

§ 937.5 Allowed activities.

All activities except those specifically prohibited by Section 937.6 may be carried on in the Sanctuary subject to all prohibitions, restrictions and conditions imposed by any other authority.

§ 937.6 Activities prohibited without a permit.

(a) Unless permitted by the Assistant Administrator in accordance with Section 937.8, or as may be necessary for the national defense, in accordance with Article 5, Section 2 of the Designation, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited within the Sanctuary. All prohibitions must be applied consistently with international law.

(1) *Removing or damaging distinctive natural features.* (A) No person shall break, cut or similarly damage or take any coral or marine invertebrate except as an incidental result of anchoring outside the Fore Reef where sand anchoring is encouraged but not required. Divers are prohibited from handling coral or standing on coral formations.

(B) No person shall take, except incidentally to allowed fishing activities, any tropical fish or marine invertebrate.

(C) There shall be a rebuttable presumption that any items listed in this paragraph found in the possession of a person within the Sanctuary have been collected or removed from within the Sanctuary.

(2) *Operation of watercraft.* All watercraft shall be operated in accordance with Federal rules and regulations that would apply if there were no sanctuary. The following constraints also shall be imposed.

(A) No person shall place any anchor on coral within the Fore Reef of the Sanctuary nor allow any chain or rope to enter the Fore Reef in a way that injures any coral. When anchoring dive boats, the first diver down shall inspect the anchor to ensure that it is placed off the corals and will not shift in such a way as to damage corals. No further diving is permitted until the anchor is placed in accordance with these requirements.

(B) Watercraft must use mooring buoys, stations or anchoring areas when such facilities and areas have been designated and are available.

(C) Watercraft shall not be operated in such a manner as to strike or otherwise cause damage to the natural features of the Sanctuary.

(D) All watercraft from which diving operations are being conducted shall fly in a conspicuous manner, the red and white "divers down" flag.

(3) *Using harmful fishing methods.* (A) No person shall use or place wire fish traps within the Sanctuary.

(B) No person shall place lobster traps within the Fore Reef area of the Sanctuary.

(C) No person shall use pole spears, Hawaiian slings, rubber-powered arbalets, pneumatic and spring loaded guns or similar devices known as spearguns within the Sanctuary.

(D) No person shall use poisons, electric charges, explosives or similar methods within the Sanctuary.

(4) *Removing or damaging distinctive historical or cultural resources.* No person shall remove, damage or tamper with any historical or cultural resources, including cargo pertaining to submerged wrecks.

(5) *Discharges.* No person shall deposit or discharge any materials or substances of any kind except:

(A) Fish or parts and chumming materials.

(B) Cooling water from vessels.

(C) Effluents from marine sanitation devices.

(6) *Markers.* (A) No person shall mark, deface or damage in any way or displace, remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts or other boundary markers installed by the managers or markers placed for the purpose of lobster pot fishing.

(B) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to these prohibitions. The exemption of additional activities having significant impacts shall be determined in consultation between the Assistant Administrator and the Department of Defense.

(C) The prohibitions in this Section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with principles of international law, including treaties, conventions and other international agreements to which the United States is signatory.

§ 937.7 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 against any person subject to the jurisdiction of the United States for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. Procedures are outlined in Subpart D of Part 922 (15 CFR Part 922) of this Chapter. Subpart D is applicable to any instance of a violation of these regulations.

§ 937.8 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Assistant Administrator in accordance with this section may conduct the specific activity in the Sanctuary including any activity specifically prohibited under Section 937.6, if such activity is (1) research related to the resources of the Sanctuary, (2) to further the educational value of the Sanctuary, or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Coastal Zone Management, ATTN: Sanctuary Programs Office, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235. An application shall include a description of all activities proposed, the equipment, methods, and personnel (particularly describing relevant experience) involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(c) In considering whether to grant a permit the Assistant Administrator shall evaluate such matters as (1) the general profession and financial responsibility of the applicant; (2) the appropriateness of the methods envisioned to the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreational, educational or scientific information; (4) the end value of the activity; and (5) such other matters as deemed appropriate.

(d) In considering any application submitted pursuant to this Section, the Assistant Administrator shall seek the views of the Fishery Management Councils and may seek and consider the views of any person or entity, within or outside of the Federal government, and may hold a public hearing, as deemed appropriate.

(e) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject to such condition(s) as deemed appropriate. The Assistant Administrator or a designated representative may observe any permitted activity and/or require the submission of one or more reports of the status or progress of such activity. Any information obtained shall be made available to the public.

(f) The permit granted under paragraph (e) may not be transferred without written permission of the Assistant Administrator.

(g) The Assistant Administrator may amend, suspend or revoke a permit granted pursuant to this Section, in whole or in part, temporarily or indefinitely, if the permit holder (the Holder) has acted in violation of the terms of the permit or of the applicable regulations. Any such action shall be set forth in writing to the Holder, and shall set forth the reason(s) for the action taken. The Holder may appeal the action as provided for in § 937.10.

§ 937.9 Other permits.

All permits, licenses and other authorizations issued pursuant to any other authority remain valid if they do not authorize any activity prohibited by Section 937.6. Any interested person may request that the Assistant Administrator offer an opinion on whether an activity is prohibited by these regulations.

§ 937.10 Appeals from administrative action.

(a) Any interested person (the Appellant) may appeal the granting, denial, or conditioning of any permit under § 937.8 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal shall be in writing, shall state the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this Section, the Administrator shall notify the permit Applicant, if other than the Appellant, and may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Administrator shall decide the appeal in accordance with the criteria set in § 937.8(c) as appropriate, based upon information relative to the application on file at OCZM and any additional information, the summary record kept of any hearing and the Hearing Officer's recommended decision, if any, as provided in paragraph (c) and such other considerations as deemed appropriate. The Administrator shall notify all interested persons of the decision, and the reason(s) therefor in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(c) If a hearing is requested or if the Administrator determines one is appropriate, the Administrator may grant an informal hearing before a Hearing Officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the *Federal Register*. Such hearing shall normally be held no later

than 30 days following publication of the notice in the **Federal Register** unless the Hearing Officer extends the time for reasons deemed equitable. The Appellant, the Applicant (if different) and, at the discretion of the Hearing Officer, other interested persons, may appear personally or by counsel at the hearing and submit material and present such arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend in writing a decision to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify interested persons of the decision, and reason(s) therefor in writing within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's action shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this Section may be extended for a period not to exceed 30 days by the Administrator for good cause, either upon his or her own motion or upon written request from the Appellant or Applicant stating the reason(s) therefor.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6280, 34-17451, 35-21883, 39-607, IC-11558, and IA-746]

Revision of Fee Schedule for Records Services

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its rule relating to fees for records services as reflected in a new service contract. The new contract replaces a prior contract for information dissemination services that expired on September 30, 1980. As of October 1, 1980, the new contract provides for the continuance of services to disseminate filings made with the Commission to interested members of the public.

EFFECTIVE DATE: January 26, 1981.

FOR FURTHER INFORMATION CONTACT: Edward A. Wilson, FOIA Officer, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-523-5530.

SUPPLEMENTARY INFORMATION: A new services contract that includes but is not limited to the reproduction of public documents in the public reference room in Washington, D.C. and in the Commission's regional office reference rooms in New York City, Chicago and Los Angeles was signed by the Commission on October 1, 1980 with Disclosure, Inc., 5161 River Road, Bethesda, Maryland 20816. This information dissemination services contract is reflected in 17 CFR Part 200. The new fee schedule for services provided to the public is indicated in the following revision. For convenience, Appendix E—Schedule of fees for records services, is being reprinted in its entirety.

Accordingly, Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended by revising § 200.80e to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

§ 200.80e Appendix E—Schedule of fees for records services.

Searching and Attestation Services. Locating and making available records requested for inspection or copying (including overhead costs): First one-half hour—No Fee; Each additional one-half hour or fraction thereof—\$2.50.

Attestation with Commission Seal (in addition to other fees, if any): \$2.00.

Payment for the above services must be made by check or money order payable to: "Treasury of the United States." Address mailed payments to: Comptroller, Securities and Exchange Commission, Washington, D.C. 20549.

Facsimile Copies of Documents.—Facsimiles of public documents filed with the Commission and retained as hard copy records or as microfiche are provided by a service contractor at rates established by a contract between the contractor and the Commission. All requests for regular service facsimile copies should be directed to the Public Reference Branch, Securities and Exchange Commission, Washington, D.C. 20549. Request for priority services may be directed to the service contractor, or to the Public Reference Branch. Requests for watching services should be directed to the service contractor. Cost estimates with respect to any regular or priority copying job will be supplied upon request by the Public Reference Branch.

Copies, when authorized, will be sent directly to the purchaser by the service contractor unless attestation is requested. The purchaser will be billed by the contractor for the costs of the

copies plus postage or other delivery charges, if any. Payment of all copying charges must be made to the contractor, not to the SEC, in the manner specified on the contractor's invoice. The purchaser will be billed separately by the Commission for searching and attestation services, if any, at the rates noted above.

Paper-to-paper facsimile copies may range from 8½" × 11" to 14" in size, regardless of the size of the original, and are subject to 25% reduction to accommodate oversized originals if the resulting copies remain legible. If two or more facsimile copies must be made from oversized originals, the customer will match and join the copies and be billed for them at the unit page charge for each copy produced. If facsimile copies are to be certified by the SEC, the copies will have a left margin of at least 1 inch. Fiche-to-paper blowback copies will be 8½" × 11", including clear 6-point bold type characters if the original paper that was filmed was itself legible.

The following types of dissemination services are available. The stated time for delivery in each case begins to run only after receipt of the material by the contractor; if files cannot immediately be made available by the Commission, the time of shipment will be affected. The contractor maintains files of most materials.

Regular service.—Hard (facsimile) copies of original hard copies, or from microfiche accessible to the contractor, will be shipped within seven calendar days after order and material are received by the contractor—each page—\$0.10; Minimum charge each order for regular service—\$5.00. (Delivery costs are additional; applicable sales taxes are included.)

Priority service.—Hard (facsimile) copies of original hard copies, or from microfiche accessible to the contractor, will be shipped by 4 p.m. of the day following receipt of the order, exclusive of weekends or holidays—each page \$0.35; Minimum charge each order for priority service—\$10.00. (Delivery costs and applicable sales taxes are additional.)

Watching service.—Hard (facsimile) whole copies of customer-specified original or originals received by the contractor for filming as part of the ordinary maintenance of the contractor's master film file will be shipped by 4 p.m. of the day following contractor receipt of the original(s), exclusive of weekends or holidays—each page—\$0.45; Minimum charge each order for watching service—\$25.00. (Delivery costs and applicable sales taxes are additional.)